

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BANKS v. US, 2016-2305; 2016-2326

**BANKS' UNOPPOSED MOTION FOR THIRTY (30) DAY EXTENSION
OF TIME TO FILE APPELLATE BRIEF**

Pursuant to Federal Rule of Appellate Procedure 26(b) and Federal Circuit Rule 26(b), Plaintiffs-Appellants/Cross-Appellees John H. Banks et. al. ("Appellants"), by counsel, request a thirty (30) day extension of time to file their opening appellants' brief, and respectfully state as follows:

1. Pursuant to Fed. Cir. R. 31, Appellants are currently due to serve and file their opening brief by Tuesday, September 6, 2016.

2. Appellants request a thirty (30) day extension of time to October 6, 2016 to file and serve their opening brief due to primary appellants' counsel of record Mark Christensen's travel schedule and commitments in other matters.

3 Mr. Christensen was out of the country from August 8-21, 2016. He will be out of the office from August 25-28, 2016 on bereavement, to attend a funeral in Los Angeles, California. Mr. Christensen will also be out of the office from September 12-18, 2016 for meetings in Washington, D.C., and from September 28-30, 2016 in San Diego, California for a professional conference.

4. In addition, co-counsel of record Mr. John Ehret, who is 87 years old, was recently hospitalized with pneumonia and related symptoms, and may require hip surgery.

5. Banks has informed all other parties of its intention to seek an extension of time, and no parties oppose the extension.

6. Counsel for Appellants has at all times exercised diligence to provide the Court of Federal Claims with timely and professional briefs. A thirty (30) day extension of time to file its opening appellate brief would enable counsel to do the same in this Court, while at the same time fulfilling obligations to other courts and other matters.

7. Appellants and their counsel have not previously sought an extension of time in this Appeal.

8. Pursuant to Fed. Cir. R. 26(b)(5), attached, and incorporated by reference, is counsel Mark Christensen's affidavit explaining good cause for the requested extension of time. (Christensen Affidavit, attached hereto as Ex. 1.)

9. Undersigned counsel has spoken about this motion for extension with counsel for the United States, the appellee/cross-appellant, who has no objection to the same.

11. Plaintiffs' Certificate of Interest is attached. (Certificate of Interest, attached hereto as Ex. 2.)

Dated: August 24, 2016

Respectfully submitted,

JOHN H. BANKS, et. al.

/s/ Mark E. Christensen

Attorney for John H. Banks, et. al.

John Ehret, Esq.
20860 Greenwood Drive
Olympia Fields, Illinois 60431

Mark E. Christensen, Esq.
Christensen & Ehret, LLP
135 South LaSalle, Suite 4200
Chicago, Illinois 60603
(312) 634-1014
(312) 634-1018 Fax

Eugene J. Frett, Esq.
Sperling & Slater, P.C.
55 West Monroe Street, Ste. 3200
Chicago, Illinois 60603

748674

CERTIFICATE OF SERVICE

I hereby certify that, on August 24, 2016, I electronically filed the foregoing Unopposed Motion for Thirty (30) Day Extension of Time To File Appellants' Brief with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit by using the appellate CM/ECF system, which will send a notice of electronic filing to the undersigned counsel of record.

I certify that all participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

John L. Smeltzer
Appellate Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7415
Washington, DC 20044
John.smeltzer@usdoj.gov

Terry M. Petrie
United States Department of
Justice
Environment and Natural Resources
Division
999 18th Street South
Terrace, Suite 370
Denver, CO 80202
terry.petrie@usdoj.gov

/s/ Mark E. Christensen
Mark E. Christensen

EXHIBIT 1

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BANKS v. US, 2016-2305; 2016-2326

AFFIDAVIT OF MARK CHRISTENSEN

1. I am a partner at the law firm Christensen Ehret, LLP, counsel of record for Plaintiffs-Appellants/Cross-Appellees Banks et. al. ("Appellants") in this matter.

2. I submit this affidavit in support of Appellants' thirty (30) day Motion for extension of time to file and serve their opening appellate brief.

3. The matters set forth herein are based upon my personal knowledge, and I could and would testify competently thereto if called upon to do so.

4. Appellants not previously sought an extension of time in this Appeal.

5. Appellants are in need of an extension of time due to extenuating circumstances as further explained below.

6. I was out of the country from August 8–21, 2016. I will be out of the office from August 25-28, 2016 on bereavement, to attend a funeral in Los Angeles, California. I will also be out of the office from September 12-18, 2016 for meetings in Washington, D.C., and from September 28-30, 2016 in San Diego, California for a professional conference.

7. In addition, my partner and co-counsel of record Mr. John Ehret, who is 87 years old, was recently hospitalized with pneumonia and related symptoms, and may require hip surgery.

9. This appeal addresses multifarious issues and is based on an extensive record developed over seventeen years of litigation.

10. In order to properly and diligently prepare our opening appellants' brief, it is necessary that we review documents from the inception of this case in 1999, which includes several hundred volumes of materials from two district court trials, as well as two prior appeals to this Court.

11. Appellants' counsel have at all times during this matter exercised diligence in providing timely and professional briefing to the district court, and we intend and expect to do the same in this Court. A thirty (30) day extension would enable us to do that while doing the same in other courts and matters to which we have commitments.

FURTHER AFFIANT SAYETH NAUGHT



Mark Christensen

SUBSCRIBED AND SWORN to before me
this 24th day of August, 2016.

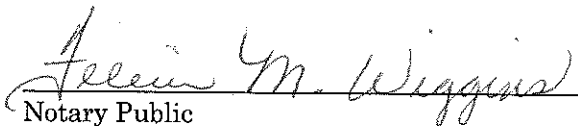

Notary Public

EXHIBIT 2

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BANKS v. U.S., 2016-2305

CERTIFICATE OF INTEREST

Counsel for the Appellants certifies the following:

1. The full name of every party represented by me is:

John H. and Mary E. Banks, Michael R. and Janice Anderson, Andrew C. Bodnar and Christine M. Zaj-Bodnar, Gregory R. and Candice C. Bovee, Frank H. Bunker, Richard R. and M. Lynn Carter, Donald R. and Gail L. Chapman, J. Thomas Conklin Trust, Gerard V. and Ruth Cosgrove as trustees of the Gerard V. Cosgrove and Ruth Cosgrove Living Trust, Marilyn J. Cunat, Marc and Mary Del Mariani, Ehret Michigan Trust, Victor J. and Frances B. Horvath Trust, George J. Gregule, Jr., Victoria Jackson aka Victoria Illsen, Hyun S. Jyung Trust, Robert J. and Patricia Kane, Frank F. and Charlotte D. Lahr, Richard Neuser, Robert S. and Pamela S. Pancoast, Dorothy A. Renner, as trustee of Dorothy Renner Trust, Leonard J. Smith, Kay F. Varga aka Kay F. Smith, Marcia Wineberg, Robert D. and Maria Melcher, Carolynne K. Morvis Trust, Craig D. and Cherie Okonski, Kent and Margaret Werger, Roger B. and Ann C. Wilschke, Country, L.L.C., Greenbriar Development, L. Richard and Nancy A. Marzke, Donald D. and Judith E. Miller, Notre Dame Path Condominium Association, Herzl Ragins, M.D., Elizabeth S. Errant aka Elizabeth Saphir, Bank one fka NBD Bank, N.A., Trustee of the Thelma C. McKay Trust.

2. The real party in interest represented by me is:

J. Thomas Conklin Trust – Thomas J. Conklin, Ehret Michigan Trust – Carole L. Ehret and Theodore L. Ehret, Victor J. and Frances B. Horvath Trust – Estate of Francis B. Horvath and Donna Peterson Frett.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party represented by me are: None.

4. The names of all law firms and the partners or associates that appeared for the party now represented by me in the trial court or expected to appear in this Court are:

John Ehret, Esq.
20860 Greenwood Drive
Olympia Fields, Illinois 60431

Eugene J. Frett, Esq.
Sperling & Slater, P.C.
55 West Monroe Street, Ste. 3200
Chicago, Illinois 60603

Mark E. Christensen, Esq.
Christensen & Ehret, LLP
135 South LaSalle, Suite 4200
Chicago, Illinois 60603
(312) 634-1014
(312) 634-1018 Fax

Dated: July 21, 2016

Respectfully submitted,

JOHN H. BANKS, et al.

By: /s/ Mark E. Christensen
Mark E. Christensen

John Ehret, Esq.
20860 Greenwood Drive
Olympia Fields, Illinois 60431

Mark E. Christensen, Esq.
Christensen & Ehret, LLP
135 South LaSalle, Suite 4200
Chicago, Illinois 60603
(312) 634-1014
(312) 634-1018 Fax

Eugene J. Frett, Esq.
Sperling & Slater, P.C.
55 West Monroe Street, Ste. 3200
Chicago, Illinois 60603

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on July 21, 2016, I caused a true and accurate copy of the foregoing **Certificate of Interest** to be filed electronically with the Clerk of the Court by using the Court's CM/ECF system, which will send a notice of electronic filing to the undersigned counsel of record:

Terry M. Petrie
Environment and Natural
Resources Division
U.S. Department of Justice
999 18TH Street, South Terrace
Suite 370
Denver, CO 80202
Attorney for Defendant/Appellee

/s/Mark E. Christensen
MARK E. CHRISTENSEN